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was the more familiar, and acted in good faith, even if he and the executor were partners in the business.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 183-184½.* 10 Va.-W. Va. Enc. Dig. 843.]

5. Partnership (§ 121*)—Sale of Property to Partner—Burden of Purchaser.—Where a partner purchased the business from the surviving executor of another partner only after the latter sought the independent advice of a court of equity, the fact satisfied any burden upon the purchasing partner to show his good faith and disclosure of the condition of the business, with which he was more familiar, in suit by the heirs of the deceased partner against him to set aside the sale.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 183½-184½.* 10 Va.-W. Va. Enc. Dig. 843.]

Appeal from Circuit Court, Elizabeth City County.

Suit by Mary McMenamin Shepherd and another against Henry L. Schmelz, executor and trustee of James W. McMenamin, deceased, Frank W. Darling, and John McMenamin. From the decree, plaintiffs and the last-named defendant appeal. Affirmed.

Allan D. Jones, of Newport News, for appellants.

Jones & Woodward, *R. M. Lett*, and *J. W. Read*, all of Newport News, for appellees.

SHENANDOAH VALLEY LOAN & TRUST CO. v. MURRAY.

March 15, 1917.

[91 S. E. 740.]

1. Highways (§ 160 (2)*)—Obstructions—Injuries—Sufficiency of Evidence.—Where a telephone wire was taut before defendant's employees painted the house to which it was attached, but sagged immediately thereafter, the jury was warranted in finding defendant's employees caused such sagging.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 438.* 12 Va.-W. Va. Enc. Dig. 927.]

2. Highways (§ 153*)—Sagging Wire—Landowner's Liability.—A landowner must exercise reasonable care to prevent a telephone wire partly on his premises from sagging where it crosses a public road.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 299, 417, 419.* 12 Va.-W. Va. Enc. Dig. 912.]

3. Highways (§ 160 (3)*)—Landowner's Negligence—Sufficiency of Evidence.—Evidence that a sagging telephone wire was caused by

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

defendant landowner's acts, and that such condition had existed three or four months before the accident, made defendant's negligence a jury question.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 440-442.* 12 Va.-W. Va. Enc. Dig. 927.]

4. Highways* (§ 160 (3*))—Obstructions—Contributory Negligence—Jury Question.—Plaintiff's contributory negligence was a jury question where the buggy in which she was riding was driven into a sagging telephone wire which she might have seen had she been looking.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 440-442.* 12 Va.-W. Va. Enc. Dig. 925.]

5. Evidence (§ 128*)—Admissibility—Statements to Physician.—Plaintiff's statements of physical suffering to her physician are admissible, although he was making an examination on preparatory to testifying in her damage suit.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 383-387.* 17 Va.-W. Va. Enc. Dig. 919.]

6. Trial (§ 255 (15*))—Requested Instructions—Necessity—Physician's Diagnosis.—A physician's diagnosis of plaintiff's condition, made after her damage suit was decided upon, is admissible without a cautioning instruction where no request for such instruction was made.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 641.* 7 Va.-W. Va. Enc. Dig. 711.]

7. Evidence (§ 477 (2*))—Opinion Evidence—Physical Condition.—A nonexpert witness' statement that plaintiff seemed to be suffering and nervous held admissible.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2238.* 5 Va.-W. Va. Enc. Dig. 793.]

8. Evidence (§ 470*)—Opinion Evidence—Conclusion of Witness. A nonexpert witness' conclusion of fact is admissible only when the jury cannot be fully informed regarding the facts upon which he bases it.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2220.* 5 Va.-W. Va. Enc. Dig. 792.]

9. Highways (§ 160 (2*))—Obstructions — Injuries—Evidence.—In an action for negligently allowing a telephone wire to sag across a public road, evidence that the wire could be used for installing a telephone on defendant's property is admissible upon the issue that the wire was of value to him.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 438.* 12 Va.-W. Va. Enc. Dig. 927.]

10. Highways (§ 160 (2*)) — Obstructions — Injuries—Evidence.—In an action for negligently allowing a telephone wire to sag

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across a public road, evidence regarding the condition of the wire two months previous to the accident held admissible.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 438.* 12 Va.-W. Va. Enc. Dig. 927.]

11. Highways (§ 160 (2)*)—Obstructions—Injuries—Evidence.—In an action against a landowner for negligently allowing a telephone wire to sag across a public road, evidence that, as against another landowner, the telephone company claimed to own the wiring is inadmissible, where the contracts in the two cases were not proven similar.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 438.* 12 Va.-W. Va. Enc. Dig. 927.]

12. Highways (§ 160 (3)*)—Obstructions—Injuries—Instructions.—In an action for negligently allowing a telephone wire to sag across a public road, an instruction that defendant landowner owned the wiring, etc., if the telephone company made no claim to it and the previous landowner had relinquished her claim to it, held warranted by the evidence.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 440-442.* 12 Va.-W. Va. Enc. Dig. 929.]

13 Highways (§ 160 (3)*)—Obstructions—Injuries—Instructions.—In an action for negligently allowing a telephone wire to sag across a public road, an instruction that the wiring, etc., belonged to defendant landowner if conveyed by his predecessor in title, and the telephone company made no claim to it, held not erroneous as ambiguous or because not stating a proposition of law.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 440-442.* 12 V.-W. Va. Enc. Dig. 929.]

14. Highways (§ 160 (3)*)—Obstructions—Injuries—Instruction.—An instruction that it was defendant landowner's duty to repair a sagging telephone wire if he knew of its condition or should have known of it, is warranted by evidence that the sagging was caused by defendant's employees some months before the accident.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 436, 440-442.* 12 Va.-W. Va. Enc. Dig. 929.]

15. Damages (§ 131 (4)*)—Excessive Amount.—\$1,000 damages is not excessive where plaintiff was confined to her bed about five weeks and was a nervous wreck for a year.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 365, 367, 370.* 4 Va.-W. Va. Enc. Dig. 206.]

Error to Circuit Court, Fairfax County.

Action by Mary A. Murray against the Shenandoah Valley

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Loan & Trust Company. Judgment for plaintiff, and defendant brings error. Affirmed.

M. L. Walton, of Woodstock, and *John W. Rust*, of Fairfax, for plaintiff in error.

Moore, Keith, McCandlish & Hall, of Fairfax, for defendant in error.

TOWN OF VIRGINIA BEACH *v.* OGLE.

March 15, 1917.

[91 S. E. 747.]

Municipal Corporations (§ 821 (2)*)—Jury Question—Existence of Street.—Whether a municipal corporation accepted part of a street so as to be liable for defects in it was made a jury question, where Acts 1906, c. 76, incorporating the town, referred to a map prepared by its council pursuant to Code 1904, § 1014, and the town had done some repairing on such portion of the street.

[Ed. Note.—For other cases, see **Municipal Corporations**, Cent. Dig. § 1746.* 4 Va.-W. Va. Enc. Dig. 355.]

Sims, J., dissenting.

Error to Circuit Court, Princess Anne County.

Action by *Lilly M. Ogle* against Town of Virginia Beach. Judgment for plaintiff, and defendant brings error. Affirmed.

A. Johnston Ackiss, of Norfolk, for plaintiff in error.

J. Edward Cole, of Norfolk, for defendant in error.

TYLER, Clerk of Circuit Court, *v.* GARRISON.

March 20, 1917.

[91 S. E. 749.]

Appeal and Error (§ 389 (1)*)—Statute—Appellate Proceedings.—Code 1904, § 3538, declaring that a poor person may be allowed by a court to sue or defend a suit without paying fees or costs, whereupon he shall have, from any counsel whom the court may assign him, and from all officers, all needful services and process, without any fees, does not apply to appellate proceedings.

[Ed. Note.—For other cases, see **Appeal and Error**, Cent. Dig. §§ 2072, 2073.* 1 Va.-W. Va. Enc. Dig. 606.]

Error to Circuit Court, Prince William County.

Action between *W. W. Garrison* and *George G. Tyler*, Clerk

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.